

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NASSAU: CIVIL TERM, PART 13

ORIGINAL

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4 HYACINTH SIMMS,

5 Plaintiff,

Index No.

6 -against-

602058/16

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J.P. MORGAN CHASE BANK, TOWER GROUP,

DISMISSAL

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INC., MORANT INSURANCE AGENCY, INC.,

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AFFILIATED ADJUSTMENT GROUP LTD.,

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ASSURANT PROPERTY ADVANTAGE a/k/a

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ASSURANCE SPECIALTY PROPERTY LENDING

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SOLUTIONS GROUP, C.J. RUBINO & COMPANY,

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INC., MSW ADJUSTMENT GROUP, INC., DG

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CUSTOM BUILT HOMES & REMODELING,

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Defendants.

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April 23, 2019

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Nassau Supreme Court

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Mineola, New York 11501

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B E F O R E :

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THE HONORABLE JEROME C. MURPHY,

Justice, Supreme Court

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A P P E A R A N C E S :

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Attorneys for Defendant JP Morgan Chase Bank:

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McCALLA RAYMER, ESQS.

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485 Rte. 1 South Ste. 300

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Iselia, New Jersey 08830

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BY: OSCAR PRIETO, ESQ., of Counsel

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Attorneys for Defendant Affiliated Adjustment Group LTD:

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L'ABBATE, BALKMAN, COLAVITA & CONTINI, LLP

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1001 Franklin Avenue

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Garden City, New York 11530

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BY: LAUREN DAVIS, ESQ., of Counsel

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(Continued on next page.)

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1 Attorneys for Defendant Assurant Property Advantage a/k/a 2
Assurance Specialty Property Lending Solutions Group:
2 HINSHAW & CULBERTSON, LLP
800 Third Avenue 13th Floor
3 New York, New York 10022
BY: MATTHEW FERLAZZO, Esq., of Counsel

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5 Lillian Weidlein
Official Court Reporter

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7 * * * * *

8 THE CLERK: The following matter appears on
9 this date's certification calendar, as well as motion
10 calendar, under Index 602058 of 2016, Hyacinth Simms,
11 for which there is no appearance on behalf of the
12 Plaintiff, against J.P. Morgan Chase, et. al.

13 Counsel for defendant J.P. Morgan Chase, your
14 appearance for the record.

15 MR. PRIETO: Oscar Prieto, of counsel to
16 McCalla Raymer, 485 Route 1, Iselia, New Jersey, 08830.

17 Good morning, your Honor.

18 THE COURT: Good morning.

19 THE CLERK: Counsel for defendant Affiliated
20 Adjustment Group, your appearance for the record.

21 MS. DAVIS: Lauren Davis, of L'Abbate,
22 Balkman, Colavita and Contini, 1001 Franklin Avenue,
23 Garden City, New York, 11530.

24 THE CLERK: Counsel for Assurant Property
25 Advantage, your appearance for the record.

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1 MR. FERLAZZO: Matthew Ferlazzo, with the law 3
2 firm of Hinshaw and Culbertson, 800 Third Avenue, 13th
3 floor, New York, New York, 10022.

4 THE COURT: All right. I take it there is no
5 appearance by plaintiff's counsel? All right.

6 MS. DAVIS: Correct.

7 THE COURT: And I think there's an
8 application to be heard. Who wants to make the
9 application?

10 MR. FERLAZZO: Your Honor, I think I can make
11 it on behalf of all the defendants.

12 We've had numerous problems with getting in
13 touch with plaintiff's counsel. There has been
14 numerous efforts to obtain discovery from him. I
15 believe Chase had a motion that was granted for a
16 conditional dismissal if he didn't comply with
17 discovery. Both my client and Miss Davis' clients have
18 also made motions that are returnable today to dismiss
19 for plaintiff's failure to comply with discovery.

20 We were here last week on a conference.

21 THE COURT: On April 18th.

22 MR. FERLAZZO: April 18th. Plaintiff's
23 counsel did not appear. At the Court's direction I
24 sent him a letter, both via email and UPS, advising him
25 that the conference was being adjourned and the

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1 motion's being adjourned to today's date.

4

2 THE COURT: Do you have a copy of that
3 letter?

4 MR. FERLAZZO: I do, your Honor, along with
5 the cover email, the letter and the UPS tracking
6 receipt showing it was delivered to plaintiff's
7 counsel's office (handing.)

8 I also emailed him yesterday, which I have a
9 copy of, asking if he would be attending today's
10 conference. He did not respond to that email
11 (handing.)

12 THE COURT: Okay.

13 MR. FERLAZZO: I'd ask that in light of all
14 of this, your Honor, that the case be dismissed at this
15 time.

16 THE COURT: All right.

17 First of all, let's have these letters marked
18 as exhibits.

19 (Whereupon, above-referred letters marked
20 Defendant Assurant's A and B in evidence by the court
21 reporter.)

22 THE COURT: All right.

23 All counsel, do you want to make an
24 application?

25 MS. DAVIS: Yes, your Honor.

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1 I would just like to add that I think this is 5
2 the fourth motion now between the three of us that
3 we've made seeking the same relief. Plaintiff has not
4 put in opposition to any of the motions. And we are on
5 the calendar to certify today. We even had a
6 preliminary conference in this matter. So I would also
7 second that application to dismiss the complaint.

8 MR. PRIETO: Your Honor, I join in the
9 applications. We had a motion to dismiss which was
10 granted by your Honor in February 2018. And it gave
11 counsel sixty days in which to respond to the
12 discovery, which he never did.

13 THE COURT: Well, I'm going to take the
14 approach that this matter was on on April 18th.
15 Counsel did not appear. At the Court's direction you
16 wrote him he was to be here today. He has not
17 appeared. It's now 12:25 P.M. And pursuant to Court
18 Rules section, I believe it's 202.27, the Court is
19 dismissing the case without prejudice due to counsel's
20 failure to appear on two consecutive occasions.

21 I'll return your motions since the case is
22 dismissed. And I'm going to direct that you order a
23 copy of the record, and I will so order the dismissal.

24 THE CLERK: Withdrawing the two motions?

25 THE COURT: The case is dismissed so there is

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1 no reason to decide the motions.

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2 All right. Anything further?

3 MR. PRIETO: My motion has already been
4 decided. So, had a return date of 60 days, or it would
5 be dismissed based on the order.

6 THE COURT: Well, I'm dismissing it on the
7 record. I can't double dismiss it.

8 THE CLERK: Was your motion already decided?

9 MR. PRIETO: Yes.

10 THE COURT: One dismissal is enough.

11 MS. DAVIS: Thank you, your Honor.

12 MR. PRIETO: Thank you.

13 * * *

14 CERTIFIED THAT THE FOREGOING IS A TRUE AND
15 ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC
16 MINUTES IN THIS CASE.

16

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LILLIAN WEIDLEIN

Official Court Reporter

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Serve on all counsel with notice of entry.

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SO ORDERED:

April 24

, 2019

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JSC

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HON. JEROME C. MURPHY

22

ENTERED

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MAY 28 2019

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NASSAU COUNTY
COUNTY CLERK'S OFFICE

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